

REMARKS

This Paper is submitted in response to the Office Action dated August 8, 2006 having a shortened statutory response period ending on November 8, 2006. This Paper is filed within the shortened statutory response period. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-2, 4-13, 15-16, 18-20, 22, 24-26, and 28-37 are currently pending in this application. Claims 3, 14, 17, 21, 23, and 27 have been canceled.

Claims 1-2, 4-13, 15-16, 18-20, 22, 24-26, and 28-37 were rejected under 35 U.S.C. §112 1st paragraph as the terms “outermost” and “solution contact” were alleged to be not supported by the specification. These claims were also rejected under 35 U.S.C. §112 2nd paragraph as the term “solution contact” was alleged to be indefinite. Applicants respectfully disagree with and traverse these rejections. It is a well-settled axiom of the patent law that a patent application need not describe the claimed subject matter in exactly the same terms as used in the claims. *In re Wertheim*, 191 USPQ 90, 96 (CCPA 1976). Consequently, the test for determining compliance with the description requirement is whether the application reasonably conveys to the skilled artisan that the inventor had possession of the claimed subject matter at the time of the filing date. *Eiselstein v. Frank*, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995). The skilled artisan would readily recognize that the present specification—and Figures 2 and 3 in particular—discloses a tubing having an outermost layer and a solution contact layer. *See* present application at page 1 line 11 through page 2 line 4. Moreover, multiple layer tubings having “an outermost layer” and “a solution contact layer” are commonly known in the art. *See* U.S. Patent No. 6,974,447, col. 4 line 63 through col. 5 line 2 (a port tube having an outermost layer and a solution contact layer). Applicants respectfully submit that one of ordinary skill in the art would understand that a multiple layer tubing having an outermost layer and a solution contact layer is disclosed in the present specification. In view of the foregoing, Applicants respectfully request that the §112 rejections be withdrawn.

Claims 1-2, 4-13, 15-16, 18-19, and 34-35 were rejected under 35 U.S.C. § 103(a) for allegedly being obvious over U.S. Patent No. 5,356,709 to Woo et al. (*Woo*) in view of U.S. Patent No. 5,849,843 to Laurin et al. (*Laurin*). Claims 20, 22, 24-26, 28-33, and 36-37 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over *Woo* in view of *Laurin* and in

further view of U.S. Patent No. 6,127,009 to Strassmann (*Strassmann*). Applicants respectfully disagree with and traverse these alleged rejections for the reasons set forth below.

Woo and *Laurin*, either alone or in combination, fail to teach or suggest a multiple layer non-PVC tubing having a four-component outermost layer in contact with a solution contact layer as recited in independent claim 1. Rather, *Woo* discloses a multiple layer tubing having three layers—an outer layer 12, a tie layer 14, and a core layer 16. *Woo*'s outer layer 12 contains only two components (polypropylene copolymer blended with SEBS copolymer) and does not disclose a four component layer as recited in claims 1. *Woo*, col. 3 lines 1-9, Figure 1. Moreover, *Woo* fails to disclose or suggest an outermost layer in contact with a solution contact layer. *Woo*'s outer layer 12 does not contact core layer 16. Rather, tie layer 14 attaches outer layer 12 to core layer 16. *Woo*'s two-component outer layer 12 separated from the core layer 16 by the tie layer 14 fails to disclose or suggest a four-component outermost layer in contact with a solution contact layer as recited in independent claim 1.

Laurin fails to fulfill the deficiencies of *Woo*. *Laurin* has no disclosure whatsoever directed to a multiple layer tubing. *Laurin* merely discloses three-component and four-component polymeric blends. *Laurin*, col. 4 lines 60-65. Void of any disclosure regarding multiple layer structures, *Laurin* simply cannot disclose a tubing having an outermost layer and a solution contact layer, let alone a tubing with an outermost layer solution layer in contact with a solution contact layer as recited in claim 1. As *Laurin* fails to remedy the deficiencies of *Woo*, the combination of *Woo* and *Laurin* fails to disclose or suggest the subject matter recited in independent claim 1 and the claims depending therefrom.

No combination of *Woo*, *Laurin* and/or *Strassmann* discloses or suggests a multiple layer tubing having a five-component outermost layer that includes 1) a first thermoplastic elastomer, and 2) a polyester polyether block copolymer, 3) ethylene vinyl ester copolymer, 4) propylene, and 5) a component from the Markush group as recited in claim 20. *Woo*'s outermost layer contains no polyester polyether block copolymer. *Laurin* and *Strassmann* each individually completely lack any disclosure whatsoever regarding a polyester polyether block copolymer. Consequently, no combination of *Woo*, *Laurin*, and *Strassmann* discloses or suggests a multiple layer tubing having an outermost layer that contains polyester polyether block copolymer as recited in independent claim 20 and the claims depending therefrom.

In view of the foregoing remarks, Applicants submit that claims 1-2, 4-13, 15-16, 18-22, 24-26, and 28-37 are in a condition for allowance and respectfully request notice of the same.

Respectfully submitted,

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